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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,117	07/15/2003	Robert A. Matousek	12618	8636

26637 7590 07/28/2005

CNH AMERICA LLC
 INTELLECTUAL PROPERTY LAW DEPARTMENT
 700 STATE STREET
 RACINE, WI 53404

EXAMINER

ADAMS, GREGORY W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/620,117	Applicant(s) MATOUSEK ET AL.	
	Examiner Gregory W. Adams	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 11 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/11/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Niewold (US 4,411,581).

3. With respect to claim 1, referring to FIGS. 1-7 Niewold discloses a system 16 for unloading grain comprising an unloading conduit assembly 16, vertical conduit 68, 72 which rotates about a vertical axis (col. 5, Ins. 55-65) and pivots sideways 72 and a horizontal conduit.

4. With respect to claim 2, referring to FIGS. 1-7 Niewold discloses a system 16 for unloading grain comprising a vertical conduit 68, 72 which rotates about a vertical axis (col. 5, Ins. 55-65) and pivots sideways 72, and a horizontal conduit.

5. With respect to claim 3, referring to FIGS. 1-7 Niewold discloses a vertical conduit 68, 72 which pivots sideways 70, 76, 78.

6. With respect to claim 4, referring to FIGS. 1-7 Niewold discloses a system 16 for unloading harvested grain 16 including a vertical conduit 68, 72 extending upward from a storage tank 12 and a horizontal conduit extending radially from vertical conduit wherein a vertical conduit 68, 72 pivots sideways about a horizontal pivot axis 70, 76, 78.

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7. With respect to claim 5, referring to FIGS. 1-7 Niewold discloses a vertical conduit 68, 72 which includes a lower section 48, intermediate section 68, upper section 68 wherein intermediate and upper sections rotate relative to a lower section 48.

8. With respect to claim 6, referring to FIGS. 1-7 Niewold discloses an upper section 68 which pivots about a horizontal pivot axis 72.

9. With respect to claim 7, referring to FIGS. 1-7 Niewold discloses a vertical conduit 68, 72 pivots about a horizontal pivot axis 76, 78.

10. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Fredriksen et al. (US 5,029,436). Referring to FIGS. 1-9 Fredriksen et al. '436 discloses an agricultural combine 1 including a threshing assembly system 33 for unloading grain comprising a loop conveyor, unloading conduit 20, 22, 27, 33 and horizontal conduit 34.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fredriksen et al. (US 5,029,436) in view of Niewold (US 4,411,581). Referring to FIGS. 1-9 Fredriksen et al. '436 disclose a vertical conduit 33 extending out from a storage tank 29, horizontal conduit 34 extending radially from a vertical conduit 33. Fredriksen et al. do not disclose a vertical conduit which pivots sideways. Referring to FIGS. 1-7 Niewold discloses a vertical conduit 68, 72 which pivots sideways about a horizontal

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pivot axis 70, 76, 78. Niewold replaces a rigid vertical conduit with one that pivots about a horizontal axis to replace a rigid unloading system with a mobile relative to a storage tank swiveling mounted unloader with two degrees of movement. Col. 1, Ins. 10-35.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the vertical conduit of Fredriksen et al. to allow for sideways pivoting about a horizontal axis, as per the teachings of Niewold '581, to replace a rigid unloading system with a mobile relative to a storage tank swiveling mounted unloader with two degrees of movement.

Response to Arguments

13. Applicant's arguments filed May 11, 2005 have been fully considered but they are not persuasive.

14. With respect to claims 1-7 Applicant argues that as amended Niewold does not disclose a horizontal conduit having a greater length than the vertical conduit. As an initial matter, it is unclear which portion of applicants vertical portion equals an "extent". Excepting the indefiniteness of this added wording, if applicant means to imply the whole of the vertical length Niewold would anticipate this. Niewold disclose rotating the vertical extent based on feeding grain truck grain to some discharge point, such as a grain elevator. Moreover, Niewold addresses the problem of discharging grain truck contents at a point where a user would desired. Col. 1, Ins. 5-36. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Niewold to include a horizontal length long than a vertical length extent, such that a user could place grain precisely where it should go.

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15. With respect to claim 8, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a loop conveyor assembly for conveying grain from a threshing assembly to said grain tank and a loop conveyor assembly for conveying grain from a threshing assembly to an unloading conduit) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant placements of "or" in line 5 of claim 8 is equivalent to a loop conveyor assembly which **either** which conveys to a grain tank **or** to an unloading conduit, but not necessarily both. MPEP 2173.05(i). Thus, Fredriksen et al.'s loop conveyor 20, 22 which transport grain from a thresher 14 to a grain tank 29 reads on applicants loop conveyor assembly for conveying grain from a threshing assembly to a grain tank. It is noted that Fredriksen et al.'s loop conveyors are "loops" because the conveyor as depicted in FIG. 1 is shown has a belt or track of some type wrapped around pulleys at each end. It is noted that applicant has claimed a feature with options.

16. With respect to claim 8, applicant argues that Niewold does not disclose an unloading conduit. However, Niewold was not used as prior art in claim 8 rejections, but as a modifying reference for claim 9 in regards to a vertical conduit which pivots sideways about a horizontal pivot axis. Thus applicants arguments are without merit.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GWA



GENE O. CRAWFORD
PRIMARY EXAMINER